

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2931 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

URMILABEN SHANTILAL MODI

Versus

STATE OF GUJARAT

Appearance:

MR AD PADIVAL for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1
MR DJ BHATT for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/09/96

ORAL JUDGEMENT

1. This Criminal Misc.Application is filed by the original accused in Criminal Case No.905 of 1996 pending on the file of Judicial Magistrate First Class,Kalol, for quashing the said Criminal Case.

2. The matter was today for hearing before

admission, but neither the petitioners nor the petitioners' advocate has turn up though the matter came up on the board twice before this.

3. From the averments made by the petitioners in this petition, it is quite clear that Criminal Case No.905 of 1996 was registered on account of a private complaint filed by respondent No.2- Baldevbhai Bholidas Patel. The petitioners have produced an ordinary copy of the said private complaint as Annexure 'A' and the copy of summons as Annexure 'B'. When the petitioners are coming before the Court for challenging the issuance of process against them and are seeking quashing of the Criminal Case against them, it is necessary for them to produce before the Court the certified copy of the order of issuance of process against them. In the absence of certified copy of the said order, it is not possible for this court to decide as to whether the said order is legal and valid or not.

4. If the copy of the said complaint produced by the petitioner is considered, then it would be quite clear that the said complaint is consisting of the necessary material for issuing process against the petitioners for the offence punishable u/Ss.323, 504 and 506 (2) of the Indian Penal Code. It could not be said from the averments in the complaint that the complainant had not made any foundation for issuing process under those sections in his complaint. Therefore, in view of the averments made in the complaint, it is not possible to hold that the learned Judicial Magistrate was not at all justified in issuing process against the present petitioners.

5. If the principles laid down by the Appex Court in the case of State of Haryana and others vs. Bhajanlal and another 1994 (4) Judgment Today, 449 are applied to the facts of the present case, then it would be quite clear that at this stage it is not possible for quashing the prosecution in question.

6. Therefore, in view of the above discussion, I hold that the Criminal Misc. Application will have to be dismissed. I, accordingly dismiss the same.

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